86-1351

Supreme Court, U.S.
FILED
FEB 27 1987
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE
United States District Court
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

EUGENE TALLEY, JUANITA MURPHY,
and the
JACKSON COUNTY BANK, a corp.
Plaintiffs,
vs.
UTICA MUTUAL INSURANCE COMPANY, a corp.,
Defendant.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI

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IN THE

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FOR THE NORTHERN DISTRICT OF ALABAMA

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EUGENE TALLEY, JUANITA MURPHY,
and the
JACKSON COUNTY BANK, a corp.
Plaintiffs,
vs.
UTICA MUTUAL INSURANCE COMPANY, a corp.,
Defendant.

Civil Action
CV 84-L-5255-NE

JUDGMENT

This cause, coming on for trial to a jury in Decatur, Alabama, on April 1, 1985, was submitted to the jury on two special interrogatories. In answer to those interrogatories, the jury made the factual findings that the plaintiffs had not burned or procured the burning of the insured dwelling, and that the dwelling had been damaged by fire to the extent of $33,000, which sum is equivalent to the liability limits of the policy with respect to the dwelling. In addition to these findings of fact made by the jury, the Court made certain supplemental findings of fact regarding equitable issues and issues as to which the evidence was uncontroverted. Specifically, this Court finds that although Mr. Eugene Talley is the only named insured under the policy, the policy was procured for the mutual benefit of Eugene Talley and Juanita Murphy; that the policy was intended by them to cover their total insurable interests in the insured property; and that both Eugene Talley

and Juanita Murphy contributed their separate funds toward the purchase of the insured dwelling and toward payment of the premiums on the policy of insurance involved in this case. Weighing these facts in light of the jury's findings and all of the equities of this particular case, the Court concludes as a matter of law that both Eugene Talley and Juanita Murphy are entitled to share in the full proceeds of the policy to the full extent of the liability limits specified therein. *Miles v. Miles*, 99 So. 187, 189-90 (1924); *Murray v. Webster*, 54 So.2d 505, 508 (Ala. 1951); *Anderson v. Brooks*, 446 So.2d 36, 38-39 (Ala. 1984). However, the Court further finds that under the mortgage payable clause, plaintiff The Jackson County Bank is entitled to $16,362.36 of the amount otherwise due plaintiffs for damages incurred by the insured dwelling.

The Court further finds that the plaintiffs in this case incurred damages for the loss of the use of their dwelling in the amount of $6,175.00, representing additional living expenses. Such expenses being covered under the policy in question up to a policy limit of $6,600.00, the plaintiffs are entitled to recover the sum of $6,175.00 in additional living expenses from the defendant.

The Court further finds that plaintiffs incurred damage to the contents of their dwelling, including furnishings, in excess of the $16,500.00 liability limits of the policy. Plaintiffs are therefore entitled to recover the sum of $16,500.00 from defendants for the loss of the contents of their dwelling.

The Court further finds that plaintiffs incurred damage from the fire to an insured outbuilding in the amount of $1,750.00. Since the liability limit of the policy in question with respect to this outbuilding was $3,500.00, plaintiffs are entitled to recover of defendant the sum of $1,750.00 for damage to their outbuilding.

Based on the answers of the jury to special interrogatories and the supplemental findings of fact and conclusions of law made by the Court,

It is therefore ORDERED, ADJUDGED and DECREED that plaintiffs, Eugene Talley and Juanita Murphy, have and recover of defendant the sum of FORTY-ONE THOUSAND SIXTY-TWO AND 64/100 DOLLARS ($41,062.64), together with interest thereon at the rate of 6 percent from the date of the loss on October 14, 1983.

It is further ORDERED, ADJUDGED and DECREED by the Court that plaintiff, The Jackson County Bank, have and recover of defendant the sum of SIXTEEN THOUSAND THREE HUNDRED SIXTY-TWO AND 36/100 DOLLARS ($16,362.36), together with interest thereon at the rate of 6 percent from the date of the loss on October 14, 1983.

It is further ORDERED, ADJUDGED and DECREED by the Court that the costs incurred herein are hereby taxed to the defendant.

DONE this 9th day of April, 1985.

SEYBOURN H. LYNNE
SENIOR JUDGE

IN THE

United States District Court

FOR THE NORTHERN DISTRICT OF ALABAMA

NORTHEASTERN DIVISION

EUGENE TALLEY, JUANITA MURPHY,

Plaintiffs,

vs.

UTICA MUTUAL INSURANCE COMPANY, a Corp.

11:30 a.m, April 3, 1985

CV84-L-5225-NE

Decatur, Alabama

Hon. Seybourn H. Lynne

FINDINGS OF FACT

THE COURT: After having received the answers of the jury to the Special Interrogatories, the Court makes the additional findings: that although Mr. Eugene Talley is the only named insured, that under the equities in this case both Eugene Talley and Juanita Murphy are entitled to the proceeds of the policy of insurance, that the Jackson County Bank is entitled to recover the full amount due under the loss payee clause in the mortgage, which has been stipulated.

The Court further finds that the plaintiff in the case, the insured, incurred damage for the loss of use represented by additional living expenses in excess the amount of $6,175.00, that the damage to the contents of the dwelling house consisting of the furnishings exceeded the sum of $16,500.00. I am, of course, will enter a judgment based upon these findings which I

have dictated to the Court Reporter, and there will be a judgment entered when I get back to Birmingham.

MR. BREWER: Your Honor, There was one other area that was the damage to the outbuilding.

THE COURT: Yes, I find that the damage to the outbuilding which was insured for $3,500.00 was half of that.

MR. BREWER: All right, sir.

I certify that the foregoing is a correct transcript from the record of the proceedings in the above-entitled matter.

MARGE WILSON
COURT REPORTER

APRIL 4, 1985
DATE